COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY MCI FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH GTE SOUTH INCORPORATED CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996	))))))	CASE NO. 96-440

O R D E R

On December 23, 1996, the Commission issued its final Order (the "December Order") in the arbitration proceedings between MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, "MCI") and GTE South Incorporated ("GTE") wherein it decided, pursuant to the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (the "Act") the major disagreements regarding the parties' proposed interconnection agreement. Minor modifications to, and clarifications of, those decisions appear in the Commission's subsequent Order dated February 4, 1997 (the "February Order"). Hereinafter, the December Order and the February Order are referred to collectively as the "Orders."

On February 21, 1997, MCI and GTE submitted a partial agreement which they state conforms to decisions made in the Orders. The parties continue to disagree in regard to some issues. MCI filed its comments on continuing disagreements on February 21, 1997 ("MCI Comments") and GTE filed its comments on the same issues on February 25, 1997 ("GTE Comments"). Subsequently, GTE filed a Motion to Conform Proposed Agreement to Federal Court Holdings ("GTE Motion"), in which it claims that certain portions of the

Orders and the Agreement are in conflict with federal decisions concerning the Act. The principal case relied upon by GTE is Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted sub nom AT&T Corp. v. Iowa Utilities Bd., 118 S.Ct. 879 (1998).

The Commission notes that it decides herein only those disputes that are within the parameters of the Commission's original decisions on these matters. The statutory deadline for proposing issues the Commission may consider has passed. See 47 U.S.C. 252(b)(4). The Commission will determine specific language to be used in regard to appropriate issues in the parties' interconnection agreement in an effort to speed the process of implementing competition as required by the Act.

The Commission has reviewed the portions of the composite agreement regarding which there is no dispute and specifically approves those portions. The Commission also has reviewed the applicable federal decisions and the GTE Motion regarding same. Each disputed provision that has been appropriately submitted to this Commission is decided herein.

As a final introductory matter, the Commission notes GTE's suggestion [GTE Motion at 6] that the Commission revisit its methodology for determining prices for the parties' Agreement in light of the Iowa Utilities decision. No reconsideration of the Commission's pricing determinations is necessary. The Commission's decision to use a forward-looking methodology predates the FCC's issuance of its pricing rules.[1] Further, the Iowa Utilities court did not address the merits of total element long run incremental cost ("TELRIC")

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[1] See Administrative Case No. 355, An Inquiry into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate, final Order dated September 26, 1996.

methodology. The FCC's pricing rules were vacated on jurisdictional grounds alone. Accordingly, this Commission's pricing determinations are unaffected by the Iowa Utilities decision except that the Eighth Circuit Court of Appeals explicitly found that state commissions have exclusive jurisdiction to set interconnection prices.

DECISIONS ON ISSUES SUBMITTED BY THE PARTIES

Revenue Protection

MCI wishes to require GTE to provide "partitioned access to fraud prevention, detection and control functionality with pertinent operations support systems." GTE says its systems do not currently permit "partitioned access." Consequently, it is not required to provide it to MCI under the Act. GTE says MCI should agree that it may receive such access when it is available and that MCI should share the costs of developing the requested services with other carriers that request them. Because GTE does not offer these services, it cannot currently provide them to MCI. GTE also is correct that MCI and other requesting carriers should pay the costs of developing the services they demand and which GTE does not yet offer.

Next, MCI wishes to make GTE responsible for uncollectibles caused by various events. GTE says the language proposed by MCI is inappropriate because it is, inter alia, inconsistent with GTE's present methods and because it would permit MCI to make a claim against GTE for its entire revenue loss due to fraud. GTE states it should not be MCI's insurer. GTE does offer pro rata credit for the period of time during which any fraud occurs. The Commission finds it unnecessary to require GTE to ensure and protect MCI's business interests to any greater extent than that reflected in GTE's proposed language.

Indemnification and Limitation of Liability

The parties disagree in regard to numerous provisions regarding indemnification and liability. Each seeks, in detailed terms, to impose responsibility for loss upon the other. For example, GTE requests that MCI indemnify it against intellectual property infringement claims. The Commission consistently has declined to specify indemnification and liability language for the parties to arbitrated agreements. See December 23 Order at 8-9. The Commission therefore refuses to require either party to implement, in its entirety, the language proposed by the other. The parties shall submit in their final agreement language that simply provides that each party shall indemnify the other for specific acts of negligence or intentional misconduct. The Commission expects, and the law requires, the parties to work together in good faith.

Remedies for Failure to Switch Customer

This issue was not raised during the arbitration proceeding and is therefore not an appropriate subject for consideration here. Accordingly, MCI's proposed contract language is rejected. However, the Commission will expeditiously entertain complaints based upon any incumbent local exchange carrier's ("ILEC") failure, within a reasonable time, to switch the service of a requesting customer to the competitor chosen by that customer. Deliberate failure to ensure each customer his carrier of choice is not an act of good faith.

"Most Favored" Provisions

GTE states it will not make available to MCI terms given to other carriers pursuant to the interconnection agreement. It requests that MCI's proposed language be rejected. MCI correctly states that the Commission has already found that the Act requires that specific interconnection contract terms be made available to requesting carriers. See Case

No. 96-467.[2] However, the Eighth Circuit Court of Appeals has ruled that specific terms of prior agreements need not be offered to other carriers unwilling to adopt the entire prior agreement.[3] Accordingly, MCI's proposed language must be rejected.

Audits

Both parties propose language enabling MCI to perform audits of GTE. MCI wishes to perform up to four audits per year, or examinations at any time. GTE contends that the Commission did not envision this type of self-help and that if it were to agree to such provision it might be compelled to accept similar demands from other competing local exchange carriers ("CLECs") which would make the four audit per year requirement burdensome. The Commission agrees with the language that MCI has proposed with the following exceptions. MCI shall be permitted one audit per year. The language with respect to examinations shall be deleted. In addition, the Commission will not require GTE or any other carrier to be responsible for a competitor's audit expenses, should readjustments be required as a result of these audits. The recovery of the charges plus a reasonable interest penalty is sufficient. The interest should be computed at the prime lending rate[4] in effect during the period subject to the error and not be subject to compounding. One company should not bear the burden of another when ensuring compliance with any agreement.

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2 Case No. 96-467, Petition by American Communications Services, Inc. and Its Local Exchange Operating Subsidiaries, for Arbitration with GTE South Incorporated and Contel of Kentucky Pursuant to the Telecommunications Act of 1996.

3 Iowa Utilities Board, 120 F.3d at 800-801.

4 Prime lending rate refers to the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks as published by The Wall Street Journal.

GTE also wishes to change certain language contained in Article IV, Section 3.2, Article VIII, Section 6.1.3.7, Article VIII, Section 6.1.7.6 and Article XIII, Section 1.7. MCI contends that GTE once agreed to the provisions in these sections as stated and would now like to change them and make them overly broad. The Commission rejects the language that GTE has proposed and finds that the level of detail in these sections, as stated, is necessary and specific to those sections of the contract.

Dispute Resolution

The parties appear to agree that some period should be provided for negotiation of disputes between the parties before either party seeks a remedy. MCI will, however, only agree to thirty days after the initial written request. Because neither party objects to the thirty-day negotiation period, the Commission finds that it is reasonable. However, GTE wishes to include contract provisions that purport to limit MCI's remedies as provided by law. Although the Eighth Circuit Court of Appeals specifically held that "Congress did not intend to allow the FCC to review the decisions of state commissions," Iowa Utilities, 120 F.3d at 804, the Commission will not specify dispute resolution procedures for the parties. Further, the Eighth Circuit's decision regarding the FCC's lack of jurisdiction over these matters speaks for itself. Pursuant to statute, the Commission's complaint process is, of course, available.

Compensation for Transport and Termination

In accordance with the Commission's December Order, the parties have agreed to institute a "bill-and-keep" mechanism for at least six months. After that period, the parties may move to reciprocal compensation if traffic studies indicate that traffic is out of balance

by ten percent. However, MCI wishes to institute actual compensation only for the amount out of balance, while GTE states that actual compensation should be paid for all calls once the out of balance point is reached. MCI states its method would foster a greater competitive environment. However, the Act states that carriers should recover costs associated with transport and termination, 47 U.S.C. 252(d)(2)(A)(I), not a portion of those costs. As the Commission has explained, bill-and-keep is an interim measure. When the parties are tracking actual costs, they should compensate each other on that basis. Therefore, MCI's proposed language on this subject should be included in the parties' contract with the phrase "for that traffic which exceeds the aforementioned percentage" deleted.

Payment of MCI Tandem Switching Rate

GTE claims that the language proposed by MCI would require it, when reciprocal compensation for termination commences, to pay the tandem switching rate for terminating traffic whenever MCI's switch was connected to GTE's tandem switch, even though the MCI switch might simply route the call to an end-user without performing tandem switching functions. MCI should not, GTE says, impose a charge for a facility it has not deployed. MCI responds that the only way to get certain calls completed is through tandem switching; parity therefore requires that if MCI has to pay a tandem charge when MCI doesn't trunk to an end office, GTE also must pay such a charge. The Commission finds that reciprocal compensation is appropriate. However, the Commission agrees with GTE and finds that its proposed modification to the contract language is acceptable.

Reciprocal Compensation with Unbundled Network Elements

GTE does not believe it should forego access charges for interstate calls, citing the Commission's concern that ALECs may avoid universal service obligations by purchasing unbundled network elements and the FCC's decision that interstate access charges should be recovered pending resolution of interstate universal service obligations. However, in an unbundled element environment, the company originating or terminating the call should receive the applicable switching revenue. In contrast, when MCI merely resells GTE services, GTE should be allowed to retain reciprocal interconnection charges and carrier common line charges that are already in its switching charges.

Timing of GTE's Provision of Local Interconnection Trunk Groups

MCI states that mutual agreement of the due date for providing local interconnection trunk groups is necessary because delay could impair MCI's ability to compete. GTE believes it needs to retain some discretion because, in the absence of activity forecasts for various competitors, it cannot predict the demand for trunk groups and therefore cannot predict the intervals within which it will meet that demand. GTE considers MCI's demand an unacceptable performance standard. GTE agrees, however, to provide a firm order confirmation within five days of receiving an MCI order, and will in this way give MCI a specific date upon which it will provide the trunk group. GTE also says it will attempt to meet MCI's desired due date, but that it needs flexibility when necessary to meet heavy loads.

The Commission agrees with GTE that the requested flexibility is necessary. Moreover, as the Commission has repeatedly stated, it will not require specific performance

standards when there is no reason to believe that GTE will not perform its contract obligations in good faith.

Resale: "As Is" Transfers

MCI wishes to initiate an "as is" transfer of services to MCI's customers. GTE states its ordering processes do not currently support such ordering, and believes MCI should be required to list all services to be transferred. The Commission, however, finds that "as is" transfers will simplify the ordering process, enabling customers to change carriers expeditiously, without undergoing intensive questioning from the competitor and without the competitors having to obtain from GTE lists of customer-ordered services. The lack of any current process for an "as is" transfer simply reflects the fact that GTE does not yet have customers for local service resale. MCI's proposed language should therefore be included in the agreement.

Resale: Proposed Restrictions

The parties dispute numerous issues as to the availability of services for resale.

First, in regard to volume discounts, MCI claims that, pursuant to law, it is entitled to the same aggregation opportunity as that available to any other GTE customer. Accordingly, it says, it should be permitted to resell all Centrex features and functions without any unreasonable or discriminatory geographic or customer call restrictions. MCI correctly analyzes Paragraph 953 of the FCC's First Report and Order[5] to state that tariff restrictions with regard to volume discount offerings should be removed. GTE states that

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5 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98 (August 8, 1996), ("FCC Order").

the Commission's Order is silent as to the question of volume discounts available to resellers. This is true because the parties did not present specific evidence on the question. MCI's proposed language for Article V, Sections 2, 3.6.1.5, and 3.6.1.6. is appropriate and should be incorporated into the parties' agreement.

Next, MCI proposes that Article V, Section 3.2.2 require GTE to forward information regarding Lifeline/Linkup subscribers to MCI. MCI states it believes that GTE's existing customer information includes the information required to facilitate providing service to customers now subscribing to Lifeline/Linkup, and independent research by MCI on this subject is a needless duplication of effort that will harm the competitor's ability to serve low income customers. GTE contends that MCI bears the obligation of determining whether a new customer qualifies for assistance programs, and that it should not be allowed to impose the costs of meeting this responsibility upon someone else. The Commission agrees with MCI to the extent that information currently available on GTE's customer service records should be forwarded to MCI when the customers change to MCI for local service. However, GTE need not generate new information on customers switching from MCI to GTE.

Article V, Section 3.4.2 requires GTE to supply MCI with information relating to subscribers that are exempt from certain charges and, further, states that GTE shall not bill MCI for doing so. The Commission finds that GTE should supply MCI with existing information as discussed above. However, should GTE provide additional research that is not contained in the base customer record, GTE may bill MCI for the service on a time and materials basis.

Protection of MCI's Rights in Modifications for Which It Has Paid

MCI proposes to include in the agreement language which would protect its right to pro rata reimbursement from other parties who use a modification of a GTE switch for which MCI has paid. The provision appears reasonable and in accordance with the Commission's decisions in regard to pro rata sharing of expenses for modifications requested of ILECs. However, GTE argues that MCI's language encroaches upon potential intellectual property rights of its vendors and that agreement with MCI's language would subject GTE to potential contract liability to its vendors. Since MCI's proposed language addresses reimbursement for "use" of the modification, the problems GTE envisions appear remote. However, the Commission will accept MCI's language for Article VI, Section 7.2.2.2 with the following modification: the words "and subject to any intellectual property rights retained by the vendor" shall be added to the first sentence after the words "any rights MCIm has granted to any other person or retained for itself."

Article VI, Section 7.2.2.3 as proposed by MCI requires that, if GTE uses the modification for which MCI has paid, it shall reimburse MCI fully for the modification, minus any amounts MCI has received from other carriers for use of the modification. MCI says this procedure is fair because MCI would subsequently pay GTE the contract price for switching. In this way, MCI says, the parties will be in the same position as they would be if GTE had originally ordered and paid for the modification itself. GTE argues that it makes no sense to impose upon it a larger responsibility than is imposed upon other users of the modification, and asks that its suggested language be inserted into Article VI, Section 7.2.2.2 and that MCI's proposed Article VI, Section 7.2.2.3 be deleted. The Commission agrees with GTE that it should not bear a greater expense for a modification than other

carriers making use of it. Accordingly, GTE's language on this issue should be incorporated into the parties' agreement.

Customized Routing

GTE states that Article VI, Sections 7.2.3.16.4, 7.2.3.16.5, 7.2.3.16.6, 7.2.3.16.7, and 7.2.3.16.8 should not be included in the contract because they impose additional customized routing obligations on GTE that are not required by the Commission's Orders. GTE also states there has been no evidence presented to show that such types of customized routing are technically feasible. MCI contends that line class codes enable LECs to designate calling features for particular customers, and that these include the functions MCI asks to accomplish through the use of switch specific provisioning methods such as line class codes. MCI claims that, without access to these functions, it will not be able to use unbundled local switching to provide services equivalent to those provided by GTE. Finally, MCI states the FCC Order, at Section 51.319(c)(1)(I)(C)(2), defines local switching capability network element to include "any technically feasible customized routing functions provided by the switch."

The Commission has previously held that, if the ILEC claims that a service is not technically feasible, the ILEC bears the burden of proof. GTE has offered no proof in regard to the service requested here. Therefore, the Commission finds that the language proposed by MCI should be incorporated into the parties' agreement.

Directory Assistance Listing Information

MCI correctly states that GTE is required by the Commission's Orders to provide MCI with access to GTE's directory information database as requested by MCI. GTE wishes to limit this access by including language that says the access is "solely for

purposes of MCIm providing MCIm-branded directory assistance services to its local customers. . . ." GTE would not face a comparable restriction on its ability to offer directory assistance service. GTE's proposed limitation is therefore inappropriate and shall not be included in the parties' agreement.

Unused Transmission Media (Dark Fiber)

The Commission has ordered GTE to make its dark fiber available to MCI. MCI proposes that, where GTE has deployed wavelength division multiplexed ("WDM") applications, "dark fiber" also means unused wavelengths within a fiber strand for purposes of coarse or dense WDM applications. MCI states that its language will prevent GTE from improperly reserving all unused transmedia fiber by placing WDM-specific repeaters on the subject facilities to foreclose MCI's use of them. GTE argues it is unfair to expand the Commission's ruling on dark fiber to include WDM applications, and that based on Iowa Utilities, because dark fiber is not specified as an unbundled element by the FCC, it need not be provided to CLECs.

At this time, the Commission finds that no further review of its decision on this issue is warranted. The Iowa Utilities decision does not conflict with this Commission's. MCI may petition the Commission at a later date if it appears that GTE is unwilling to provide appropriate access to unused transmission media.

Cooperative Testing

GTE says Article VI, Section 19.1 does not adequately reflect the procedures whereby GTE will perform cooperative testing on unbundled network elements. GTE contends that it is overly burdensome to require GTE to test cooperatively every network element and ancillary function it might provide to MCI. GTE does state, however, that

cooperative testing is necessary to ensure that designed elements are functioning properly. Accordingly, GTE requests that references to "network elements" in this section be modified by the word "designed" and that all references to "ancillary function" be deleted. GTE states it will provide testing of elements and services on the same basis it provides such testing to itself. GTE's solution is a fair one that is geared to provide parity of service.

Ancillary Services

The parties disagree regarding compensation for certain services related to providing 911 services. MCI says that, while it is willing to compensate GTE, it should not bear the entire cost of a modification that would benefit others besides MCI. It also says that, although GTE has presented a list of items for which it should be compensated, GTE has provided no information regarding the cost of these items. MCI says GTE's proposed Article VII, Section 3.5.1 should not become a part of the contract until such information is forthcoming. GTE says it is still in the process of completing a pricing proposal, and merely requests that the list of elements for which it should fairly be compensated be inserted into the agreement. The costs, it says, will be determined by both parties pursuant to the relevant section of the contract. The Commission finds that inclusion of the list will protect GTE's right to compensation without impairing MCI's right to a fair price. Accordingly, GTE's proposed language should be inserted into the contract.

Transfer of Ownership and Billing for Yellow Pages Listings

GTE objects to MCI's proposed terms requiring GTE to transfer ownership and billing of yellow page listings, as well as white page listings, to MCI. GTE contends that yellow page listings, unlike white page listings, are a competitive, unregulated service outside the parameters of Sections 251 and 252 of the Act. MCI claims it is denied parity

if it cannot offer yellow page listings to its customers. It also states that, because all yellow page listings are included in the white page listing, the "ownership" of yellow page listings for MCI's customers automatically flows to MCI. GTE is correct in asserting that yellow pages listings are not properly before the Commission. MCI's negotiations regarding yellow pages listings should be conducted with the GTE entity that publishes the directories.

Electronic Querying of Directory Listings System

MCI seeks to incorporate a provision that GTE must provide it with electronic querying of the listing system so that MCI may view it "real-time." Parity of service requires that GTE offer nondiscriminatory access to directory listings. GTE does not claim that technical feasibility is even an issue, and claims providing access to directory assistance data and subscriber listings via other electronic methods, such as data transfer and magnetic tape, is sufficient. The Commission finds that parity requires the real time access requested by MCI. Accordingly, MCI's proffered language on this issue should be included in the parties' contract.

Combination of Directory Assistance Listings

GTE objects to MCI's proposal to combine records contained in GTE's directory assistance database with network elements to provide telecommunications service. MCI states it is entitled to this contract provision by the Act and the Commission's Orders, because directory assistance listings constitute an unbundled network element which may be combined in any technically feasible manner with other elements to provide "any" telecommunications service. MCI says it may, for example, wish to provide "Directory Assistance - Call Completion," though it does not propose to use directory assistance listing for marketing purposes. GTE also argues that, based on Iowa Utilities, it is not required

to provide the directory assistance database as an unbundled element.[6] However, pursuant to 47 U.S.C. §153(29), the directory assistance database is an unbundled network element. Accordingly, the Commission finds that, because MCI may combine unbundled elements to provide any telecommunications service pursuant to the Act, it may combine the directory assistance database with other elements to provide service.

Provision of Credit Information

GTE has agreed to provide, at MCI's request, the date it disconnected a customer. However, GTE appropriately objects to providing "an explanation" for the disconnection to MCI. It does not provide such information to anyone, including credit reporting agencies, and there is no reason for it to provide such information to MCI. As GTE states, it does not provide this information to another ILEC when one of its ex-customers leaves its territory. MCI's proposal to require this information is denied.

Number Administration/Number Reservations

GTE objects to MCI's proposed language requiring it to reserve telephone numbers for MCI's exclusive use and install MCI NXXs in GTE's switches according to local calling areas as defined by MCI. GTE does not currently reserve numbers for its own use, and says MCI may obtain numbers from the North American Numbering Plan Administrator as other carriers do. Further, GTE states that installing numbers based on MCI-defined calling areas will require costly programming changes. MCI insists that it seeks only parity, is concerned that GTE can create artificial number shortages, and states that GTE reserves large blocks of numbers for services such as Centrex. As for installation of NXXs in its

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[6] GTE Motion at 23-25.

switches for MCI-defined calling areas, MCI notes that GTE has not stated that such installation is technically infeasible. MCI has a right, it says, to define its own calling areas. The Commission agrees with MCI that it has the right to parity of service. The Commission finds that these specific issues may be addressed through the Commission's complaint process, and notes that GTE has the burden of proof with regard to technical feasibility issues.

Issues Regarding Combinations of Unbundled Network Elements

MCI wishes to order unbundled network elements in any combination and, furthermore, states that unless MCI orders the elements separately, GTE must provide them in combination. MCI also wishes to buy combinations of unbundled elements without paying a charge for connection. GTE also argues that the Iowa Utilities decision has established that an ILEC need not combine for a CLEC network elements purchased on an unbundled basis.

The Commission agrees with this characterization of the Eighth Circuit decision but notes that issues involving purchase of unbundled elements in combination are among those currently before the United States Supreme Court. In the interim, MCI may order unbundled elements in combination. However, it is appropriate for carriers requesting unbundled elements in combination to pay a nonrecurring fee, based on cost, to compensate GTE for having combined those elements. The Commission will not, however, tolerate an ILEC's literally breaking apart network elements that are physically connected in the manner requested by a CLEC. Nor may an ILEC demand any additional charge for breaking apart network elements that were already combined in the manner requested.

Bill Format

GTE would like to insert the words "[u]ntil such time as CABS bills are available for resale and unbundled loop and port charges, GTE shall format Connectivity Bills in accordance with CBSS standards" at the end of Article VIII, Section 4.1.3. The Commission has ordered that GTE shall provide CABS formal billing as soon as possible. Until CABS is available, there exists a procedural void. Accordingly, the language proposed by GTE is appropriate. However, if GTE provides CABS billing in another jurisdiction, it shall provide it in Kentucky within 30 days of the date of this Order or within 30 days of the date CABS billing is provided in another jurisdiction, whichever is sooner.

Period in Which Non-CABS Bills Must Be Paid to GTE

MCI proposes to pay GTE within 60 calendar days from the bill date or 40 calendar days from the receipt of the bill, whichever is later. MCI's rationale is that non-CABS bills will be more difficult to audit and will take additional time to verify. GTE proposes that MCI pay non-CABS bills to GTE on the bill payment date. The Commission expects that CABS billing format will be available, at the latest, within a few billing cycles after this contract is implemented. Therefore, MCI shall pay non-CABS bills to GTE on the bill payment date. Audits that reveal inappropriate charges after the bill has been paid by MCI shall be submitted to GTE for reimbursement or bill credit.

Separate File to Summarize All MCI's Usage Sensitive Messages

MCI wishes to obtain from GTE, at the time the monthly bill is transmitted, a separate file summarizing all MCI's usage sensitive messages contained in GTE's suspense and unbilled files. GTE proposes to delete the section, apparently on the grounds of its alleged inability to provide it. In order to address this concern, MCI suggests

its proposed Article VIII, Section 5.1.6 be modified by inserting the phrase "where technically feasible" after the phrase "At the same time as the monthly bill is transmitted." MCI is entitled to detailed information on the services for which it is billed, and its suggested language, with proffered modification, should be incorporated into the parties' contract.

Provision by GTE of "Root Cause Analysis" of Lack of Parity

MCI claims this requirement is necessary to ensure equal quality of service. The Commission finds that it imposes an undue burden on GTE. If parity does not appear to have been achieved, MCI may file a complaint with the Commission.

Quality Measurements

GTE correctly states that the Commission has consistently refused to require specific performance standards and reporting requirements of ILECs. It would be redundant to include in the contract statements of law such as MCI proposes, i.e., that GTE must conform to Commission rules.

Collocation/Reserving Space

GTE is willing to allow MCI to reserve space on the same terms and conditions as GTE reserves space for the same types of equipment. This provision, it says, complies with the FCC Order. MCI's proposal explicitly places the burden of proof on GTE for establishing specific planned use if it rejects a request of MCI. GTE's proposed compromise appears reasonable. The parties are directed to insert GTE's proposed language into their final agreement.

Remote Switching Modules

GTE argues it is not required to collocate switching equipment. However, as this Commission concluded in Case No. 96-467, such collocation is required because remote

switching modules are useful for interconnection or for access to unbundled network elements. Consequently, collocation of remote switching modules is required by 251(c)(6) of the Act and Paragraph 581 of the FCC Order. The parties shall include MCI's proposed language into their final agreement.

Rights-of-Way

There appears to be little substantive difference between some of the Article X contract provisions submitted by the parties. However, because MCI ultimately will not be able to select the space that it will use (GTE will make the final determination on such matters on a non-discriminatory basis), the Commission finds that Article X, Sections 3.1, 3.2, and 3.3 of the contract should read as GTE proposes.

Language proposed by MCI at Article X, Section 2.9 would require GTE to allow MCI access to controlled environmental vaults if MCI's cables run through the vaults. GTE objects, stating that the vaults contain sealed environments designed for sensitive equipment and continuous opening and closing could lead to equipment damage. The Commission agrees that GTE should be able to protect its investment in its equipment. Accordingly, the Commission finds that GTE's proposed "work around" solution should be sufficient. If MCI believes it has suffered actual injury as a result of this decision, it may petition the Commission to reconsider this issue.

Charges for Unauthorized Attachments

GTE proposes, at Article X, Section 15.1, to add a charge equal to five times the amount of the attachment fee where it finds unauthorized attachments. MCI has proposed no penalty, but would pay retroactive attachment fees and any costs incurred by GTE as a result of unauthorized attachments. The Commission considers unauthorized

attachments a serious potential problem since right-of-way space is limited. However, since the facts of each instance of allegedly unauthorized attachment may differ, the parties should bring any complaints regarding unauthorized attachments to the Commission. Penalties will be determined as appropriate. In any event, MCI should pay GTE retroactive payments and costs incurred.

MCI proposes, at Article X, Section 19.7 that, if MCI requests space occupied by GTE's retired cable, that GTE remove the cable and bear the costs of removal. Parity does not, however, require GTE to bear these costs. The Commission finds GTE's proposed text regarding this matter acceptable and requires the parties to incorporate it into their agreement.

MCI also proposes, at Article X, Section 19.10, that it have the right to use electrical power at parity with GTE's right to use the power. GTE points out that it cannot ensure parity in power usage where a third party provides the power. Language to this effect should be added to the agreement. However, where GTE controls the power supply, it should afford MCI the right to use it.

Bond Obligations

GTE states that its proposed Article X, Section 17.4, regarding a bond requirement, is commercially reasonable because GTE must have some surety that amounts due for access to poles, ducts, conduits and rights-of-way will be paid. It claims it "cannot" recover these costs otherwise. MCI states that there is no need for a bond requirement and that any sums due GTE will be paid pursuant to general invoicing and payment provisions of the agreement. The Commission agrees with MCI. The absence of a bond does not mean GTE will not be paid. GTE's proposed language is rejected.

Indemnification

GTE proposes specific indemnification language in Article X, Section 18. However, the Commission has consistently and repeatedly held in its arbitration decisions that it will not require any unwilling party to agree to specific indemnification requirements, and it affirms that decision here.

Numbering Resources and Portability

MCI proposes several additional interim number portability options, claiming that each one is a technically feasible method which has advantages over remote call forwarding. GTE contends that the interim numbering portability options it has proposed are sufficient and that additional methods have not been required by the Commission. The Commission finds that GTE's proposals are sufficient and should be incorporated into the parties' agreement.

Extent of Pricing To Be Determined (Appendix C)

MCI and GTE disagree as to the language that should appear at the beginning of paragraph 1.8 of their pricing schedule in regard to the extent of pricing to be determined later. It is not entirely clear why each party takes the position it does. However, the remainder of the paragraph, upon which the parties agree, is sufficient to enable them to deal with future pricing decisions. If either party has, during the term of this contract, a specific complaint in regard to mutual efforts to establish fair prices based on principles previously set forth by this Commission, it may address those concerns through the Commission's complaint process.

Reciprocal Compensation for Call Termination for Resale and for MCI Purchase of Unbundled Switching

MCI is correct that, when it purchases the switch as an unbundled element from GTE, GTE may no longer receive the Residual Interconnection Charge and Carrier Common Line Charge applicable to calls originating from or terminating to network customers other than its own. GTE's language to the contrary is rejected.

Recovery of Interim Number Portability Costs

GTE requests clarification of the apparent ambiguity in the Commission's December Order in which, at page 26, the Commission stated each LEC must bear its own costs for providing remote call forwarding as an interim number portability option, yet included in Appendix 1 charges for interim number portability services. GTE is correct that the December Order is ambiguous. The Commission determines herein that since the solution is an interim one, and permanent solutions are being developed, neither party will be compensated for providing remote call forwarding to a competing carrier. Appendix 1 to the Commission's December Order is modified accordingly.

Collocation Price Per Square Foot

GTE wishes to remain free to set a rate for collocation space based on the comparable prices for leased office space, as the Commission's Order stated. Appendix 1 of the December Order specified $2.33 per square foot per month, based on the collocation TELRIC study submitted by GTE. In the absence of information regarding comparable prices for leased office space, the TELRIC figure appears reasonable. If GTE has information to indicate that floor space prices given in the December Order are significantly different from the price specified, it may submit those figures to MCI for

negotiation of a modified price. If the parties are unable to agree, they may petition the Commission for resolution.

Nonrecurring Charges

The Commission has reviewed the TELRIC studies for nonrecurring charges submitted by GTE subsequent to the Commission's entry of its December Order in this case and finds them reasonable. In accordance with the December Order, the Commission adds to the TELRIC costs a factor of 10 percent for shared and common costs. See Appendix 1.

ADDITIONAL ISSUES RAISED IN THE GTE MOTION

The GTE Motion raises a number of issues in regard to contractual provisions upon which the parties disagreed prior to issuance of the federal judicial decisions upon which GTE bases the arguments in its motion. These issues are treated elsewhere in this Order. However, the GTE Motion also includes claims that some previously agreed upon provisions must also be reformed pursuant to judicial determinations. These claims are addressed in this section.

Additional Unbundling Issues

GTE argues[7] that the Eighth Circuit Court of Appeals in Iowa Utilities reversed the FCC's presumption that GTE must unbundle a network facility if it is feasible to do so, but did not reverse the FCC with respect to the list of unbundled network elements it had already set forth. Accordingly, GTE contends, the sections in the parties' submitted partial agreement containing unbundling requirements for the following functions and

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[7] GTE Motion at 23-25.

facilities must be deleted: security functions; sub-loop distribution facilities; local switching functions; customized routing; directory assistance listing information; data switching; digital cross connect system; dark fiber;[8] and housing NXXs and other numbering resources. Provision of dark fiber and directory assistance listing information is discussed elsewhere in this Order and need not be discussed further here.

The Eighth Circuit Court of Appeals determined, as GTE states, that the FCC's use of the term "technically feasible" to determine which elements must be unbundled was inappropriate. As the court explained, subsection 251(c)(3) of the Act states only that interconnection must occur at any "technically feasible" point. It does not establish the standards that determine which elements must be unbundled.[9] However, this determination does not end the inquiry.

An ILEC is required to provide access to "network elements on an unbundled basis." 47 U.S.C. § (c)(3). As the Iowa Utilities court has made clear, the term "network element" under the Act is very broadly defined. Noting that 47 U.S.C. § 153(29) defines "network element" to include not only the physical parts of the network but also the technology and information used to facilitate ordering, billing and maintenance of telecommunications service, the Court concluded that

> Our agreement with the FCC's determination that the Act broadly defines the term "network element" leads us also to agree with the Commission's conclusion that operator services, directory assistance, caller I.D., call

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8 Because the Commission has ordered GTE elsewhere to provide access to dark fiber under specified conditions and because dark fiber is not an "unbundled element," the discussion in this section does not pertain to it.

9 Iowa Utilities, 120 F.3d at 810.

> forwarding, and call waiting are network elements that are subject to unbundling. We believe that operator services and directory assistance qualify as features, functions, or capabilities that are provided by facilities and equipment that are used in the provision of telecommunication services.[10]

Id.

Based upon the breadth of the statutory language, and upon the expansive interpretation of the Eighth Circuit Court of Appeals, the Commission concludes that GTE is required by the Act to provide MCI with unbundled access to the items it lists. Each falls within the definition of "network element" in that it is a facility, capability or function provided by a facility or equipment used in the provision of telecommunications service, or information used in the provision of telecommunications service. GTE's motion that provisions in its agreement with MCI be reformed to delete its obligations to provide these elements is therefore denied. However, further requests by MCI for unbundled network elements must be appraised in light of the definition for network elements found at 47 U.S.C. § 153(29), and technical feasibility will not be considered in that definition. The Commission reiterates that GTE may not physically separate network elements that are already combined by it.

Provision of Proprietary Elements

GTE asks that the parties' agreement contain a provision explicitly incorporating the Eighth Circuit Court of Appeals' holding that ILECs need not provide proprietary network elements unless the CLEC's ability to compete would, in the absence of such

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[10] Id. at 808.

access, be "significantly impaired or thwarted." [11] This standard is precisely that of the FCC as declared in its First Report and Order, ¶ 282. This standard has long been the law, and it certainly should be understood by both parties that the law governs their agreement in any event. There does not appear to be any reason that it should be incorporated into the parties' agreement unless MCI agrees to it.

Parity of Service

GTE correctly notes that the Eighth Circuit Court of Appeals vacated the FCC's determination that an ILEC must, at a CLEC's request, furnish interconnection, network elements, and access to those elements at higher levels of quality than the ILEC provides itself.[12] GTE requests that the parties' agreement be reformed to delete provisions requiring GTE to provide network elements, interconnection, access and service in general at parity with what GTE provides itself.

GTE also wishes to delete provisions requiring GTE to provide service to MCI that is equal in quality to that GTE provides to third parties.[13] However, the Act specifically provides that an ILEC must provide service that is "at least equal in quality to that provided by the local exchange carrier to itself *or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.*" 47 U.S.C. § 251(c)(2)(C) (emphasis added). Iowa Utilities is not to the contrary. The Court specifically noted, in fact, that the Act mandates that an ILEC may not "arbitrarily treat ... some of its

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11 Id. at 811.

12 GTE Motion at 12.

13 GTE Motion at 22.

competing carriers differently than others."[14] Accordingly, the sections mandating that GTE provide service to MCI at a level that meets the quality provided to itself, or to other carriers, are in accordance with law and should not be reformed.

Lack of FCC Jurisdiction to Enforce Interconnection Agreements

GTE asserts that language must be added to the contract delineating that the FCC has no jurisdiction to enforce the interconnection agreement. The Court in Iowa Utilities specifically determined that state commissions, not the FCC, possess the authority to enforce interconnection agreements. This authority is a matter of law and there is no need to add a paragraph restating that law to the interconnection agreement.

GTE Cost Recovery

GTE states that the agreement should not be effective until a competitively neutral universal service system is implemented. The Commission rejects this demand. The Commission has repeatedly emphasized to GTE that if GTE believes its costs are not being recovered it may seek rate review.[15]

IT IS THEREFORE ORDERED that:

1. The decisions herein shall be incorporated into the parties' interconnection agreement.

2. The parties shall finalize their agreement and file it for Commission review no later than 30 days from the date of this Order.

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[14] Iowa Utilities, 120 F.3d at 813.

[15] See, e.g., Administrative Case No. 360, An Inquiry Into Universal Service and Funding Issues, Order dated May 22, 1998, at 9.

Done at Frankfort, Kentucky, this 1st day of September, 1998.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 96-440 DATED SEPTEMBER 1, 1998

GTE - MCI m LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES

NETWORK LOCAL INTERCONNECTION/ELEMENT	COMMISSION Decision
LOCAL LOOPS	
Local Loop	
2-Wire Analog Voice Grade Loop, Per Month	$19.65
4-Wire Analog Voice Grade Loop, Per Month	$27.51
Network Interface Device	
Basic NID	$1.86
12x NID	$2.00
LOCAL SWITCHING (Must purchase a Port)	
Ports	
2 Wire Basic Port	$4.02
DS-1 Port	$60.06
Local Switching	
Originating MOU	
Setup	$0.0088173
MOU	$0.0012553
Average MOU	$0.0036192
Terminating MOU	
Setup	$0.0073541
MOU	$0.0012560
Average MOU	$0.0032276
Intrastate End Office Switching	
Originating MOU	
Setup	$0.0088173
MOU	$0.0012553
Average MOU	$0.0036192
Terminating MOU	
Setup	$0.0073541
MOU	$0.0012560
Average MOU	$0.0032276
Interconnection Charge	
Intrastate MOU	0.0078026
Carrier Common Line	
Intrastate	
-Originating	$0.0318779
-Terminating	$0.0318779
Interstate End Office Switching	
Originating MOU	
Setup	$0.0088173
MOU	$0.0012553
Average MOU	$0.0036192

GTE - MCI m LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES

NETWORK LOCAL INTERCONNECTION/ELEMENT	COMMISSION Decision
Interstate End Office Switching (continued)	
Terminating MOU	
Setup	$0.0073541
MOU	$0.0012560
Average MOU	$0.0032276
Interconnection Charge	
Intrastate MOU	$0.0079315
Carrier Common Line	
Intrastate	
-Originating	$0.0100000
-Terminating	$0.0195150
Features	
Various	Resale Tariff
TANDEM SWITCHING	
Tandem Switching	
Setup	$0.0011286
MOU	$0.0005183
Average MOU	$0.0008209
INTEROFFICE TRANSMISSION	
Common/Shared Transmission Facilities	
Transport Termination	
Average MOU / Term	$0.0000726
Transport Facility per Mile	
Average MOU / Mile	$0.0000031
DEDICATED TRANSMISSION LINKS (major elements only)	
Entrance Facility	
2 Wire Voice	$31.14
4 Wire Voice	$44.01
DS1 Standard 1st System	$145.20
DS1 Standard Add'l System	$145.20
DS3 Protected, Electrical	$908.83
DS1 to Voice Multiplexing	$175.00
DS3 to DS1 Multiplexing	$256.85
Direct Trunked Transport	
Voice Facility Per ALM	$2.52
DS1 Facility Per ALM	$1.39
DS1 Per Termination	$31.83
DS3 Facility Per ALM	$33.02
DS3 Per Termination	$306.99

GTE - MCI m LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES

NETWORK LOCAL INTERCONNECTION/ELEMENT	COMMISSION Decision
DATABASES AND SIGNALING SYSTEMS	
Signaling Links and STP	
56 Kbps Links	$83.91
DS-1 Link	$145.20
Signal Transfer Point (STP) Port Term	$240.97
Call Related Databases	
Line Information Database (ABS-Queries)	$0.039
Line Information Database Transport (ABS-Queries)	$0.0051
Toll Free Calling Database (DB800 Queries)	$0.010909
SERVICE PROVIDER NUMBER PORTABILITY	
Service Provider Number Portability	Each Carrier Bears Own Costs
OTHER NETWORK ELEMENTS	
Operator Services	Under Study
Directory Assistance	Under Study
Subscriber Numbers	Under Study
LOCAL INTERCONNECTION AND RECIPROCAL COMPENSATION	
Traffic In Balance	Bill and Keep
Out of Balance Terminating Traffic +/-10% Average MOU	$0.0032276
COLLOCATION ELEMENTS	
Nonrecurring Costs	
Physical Engineering Fee per Request	$3,749.00
Building Modifications per Central Office	
Simple	$15,468.00
Moderate	$21,305.00
Complex	$27,189.00
DC Power per 40 Amps	$4,191.00
Cable Pull per 12 Fibers	$1,075.00
Cage Enclosures per Cage	$4,705.00
Monthly Recurring	
Partitioned Space per Sq. Ft.	$2.33
DC Power per 40 Amps	$388.26
Cable Pull per 12 Fibers	$15.22
Monthly Recurring for EIS	
DS0 level connection	$1.53
DS1 level connection	$3.22
DS3 level connection	$23.84

GTE - MCI m LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES

NETWORK LOCAL INTERCONNECTION/ELEMENT	COMMISSION Decision
NONRECURRING CHARGES	
UNBUNDLED SERVICES	
Service Ordering (loop or port)	
Initial Service Order, per order	$51.84
Transfer of Services Charge, per order	$17.41
Subsequent Service Order, per order	$26.37
Customer Service Record Research, per order	$5.65
Installation	
Unbundled Loop, per order	$10.64
Unbundled Port, per port	$10.64
Loop Facility Charge, per order	$69.59
The Loop Facility Charge will apply when field work is required for establishment of a new unbundled loop service.	